
SENATE BILL 5889

State of Washington

58th Legislature

2003 Regular Session

By Senators Swecker and Rasmussen

Read first time 02/18/2003. Referred to Committee on Agriculture.

1 AN ACT Relating to animal feeding operations; amending RCW
2 90.64.030 and 90.64.150; adding a new section to chapter 90.64 RCW;
3 creating new sections; providing an effective date; providing an
4 expiration date; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A livestock nutrient management program is
7 essential to ensuring a healthy and productive livestock industry in
8 Washington state. The goal of the program must be to provide clear
9 guidance to livestock farms as to their responsibilities under state
10 and federal law to protect water quality while maintaining a healthy
11 business climate for these farms. The program should develop
12 reasonable financial assistance resources, educational and technical
13 assistance to meet these responsibilities, and provide for periodic
14 inspection and enforcement actions to ensure compliance with state and
15 federal water quality laws. The legislature intends that by 2006,
16 there will be a fully functioning state program for confined animal
17 feeding operations in the state, and that this program will be a single
18 program for all livestock sectors.

1 The legislature finds that a livestock nutrient management program
2 is necessary to address the federal rule changes under which all
3 livestock operations must comply. Furthermore, budgetary conditions
4 demand efficient and effective governance. In addition, many of the
5 existing requirements and goals for dairy farms will be completed by
6 December 2003, and revisions are needed.

7 NEW SECTION. **Sec. 2.** (1) A livestock nutrient management program
8 development and oversight committee is created comprised of the
9 following members, appointed as follows:

10 (a) The director of the department of agriculture, or the
11 director's designee, who shall serve as committee chair;

12 (b) A representative of the United States environmental protection
13 agency, appointed by the regional director of the agency unless the
14 agency chooses not to be represented on the committee;

15 (c) A representative of commercial shellfish growers, nominated by
16 an organization representing these growers, appointed by the governor;

17 (d) A representative of an environmental interest organization with
18 familiarity and expertise in water quality issues, appointed by the
19 governor;

20 (e) A representative of tribal governments as nominated by an
21 organization representing tribal governments, appointed by the
22 governor;

23 (f) A representative of Washington State University appointed by
24 the dean of the college of agriculture and home economics;

25 (g) Three representatives of dairy producers nominated by a
26 statewide organization representing dairy producers in the state,
27 appointed by the governor;

28 (h) Two representatives of beef cattle producers nominated by a
29 statewide organization representing beef cattle producers in the state,
30 appointed by the governor;

31 (i) One representative of poultry producers nominated by a
32 statewide organization representing poultry producers in the state,
33 appointed by the governor;

34 (j) One representative of the commercial cattle feedlots nominated
35 by a statewide organization representing commercial cattle feedlots in
36 the state, appointed by the governor; and

1 (k) A representative of any other segment of the livestock industry
2 determined by the director of agriculture to be subject to federal
3 rules regulating animal feeding or confined animal feeding operations.

4 (2) The state department of agriculture shall provide staff for the
5 committee. The department of agriculture may request staff assistance
6 be assigned by the United States environmental protection agency to
7 assist the director in staffing the committee.

8 (3) The committee shall establish a work plan that includes a list
9 of tasks and a projected completion date for each task.

10 (4) The committee may establish a subcommittee for each of the
11 major industry segments that is covered by the recently adopted federal
12 regulations that pertain to animal feeding operations and confined
13 animal feeding operations. The subcommittee shall be composed of
14 selected members of the full committee and additional representatives
15 from that major segment of the livestock industry as determined by the
16 director. The committee shall assign tasks to the subcommittees and
17 shall establish dates for each subcommittee to report back to the full
18 committee.

19 (5) The committee shall examine the recently adopted federal
20 regulations that provide for the regulation of animal feeding
21 operations and confined animal feeding operations and develop a program
22 to be administered by the department of agriculture that meets the
23 requirements and time frames contained in the federal rules. Elements
24 that the committee shall evaluate include:

25 (a) A process for adopting standards and for developing plans for
26 each operation that meet these standards;

27 (b) A process for revising current national pollution discharge
28 elimination system permits currently held by livestock operations and
29 to transition these permits into the new system; and

30 (c) In consultation with the director, a determination of what
31 other work is needed and what other institutional relationships are
32 needed or desirable.

33 (6) The committee shall review and comment on proposals for grants
34 from the livestock nutrient management account created in RCW
35 90.64.150.

36 (7) The committee shall develop draft proposed legislation that
37 includes:

1 (a) Statutory changes, including a time line to achieve the phased-
2 in levels of regulation under federal law, to comply with the minimum
3 requirements under federal law and the minimum requirements under
4 chapter 90.48 RCW;

5 (b) Statutory changes necessitated by the transfer of functions
6 under chapter 90.64 RCW from the department of ecology to the
7 department of agriculture;

8 (c) Continued inspection of dairy operations at least once every
9 two years;

10 (d) An outreach and education program to inform the various animal
11 feeding operations and confined animal feeding operations of the
12 program's elements; and

13 (e) Annual reporting to the legislature on the progress of the
14 state strategy for implementing the animal feeding operation and
15 confined animal feeding operation.

16 (8) The committee shall provide a report by December 1, 2003, to
17 appropriate committees of the legislature that includes the results of
18 the committee's evaluation under subsection (5) of this section and
19 draft legislation to initiate the program.

20 (9) This section expires June 30, 2006.

21 **Sec. 3.** RCW 90.64.030 and 2002 c 327 s 1 are each amended to read
22 as follows:

23 (1) Under the inspection program established in RCW 90.64.023, the
24 department may investigate a dairy farm to determine whether the
25 operation is discharging pollutants or has a record of discharging
26 pollutants into surface or ground waters of the state. Upon concluding
27 an investigation, the department shall make a written report of its
28 findings, including the results of any water quality measurements,
29 photographs, or other pertinent information, and provide a copy of the
30 report to the dairy producer within twenty days of the investigation.

31 (2) The department shall investigate a written complaint filed with
32 the department within three working days and shall make a written
33 report of its findings including the results of any water quality
34 measurements, photographs, or other pertinent information. Within
35 twenty days of receiving a written complaint, a copy of the findings
36 shall be provided to the dairy producer subject to the complaint, and

1 to the complainant if the person gave his or her name and address to
2 the department at the time the complaint was filed.

3 (3) The department may consider past complaints against the same
4 dairy farm from the same person and the results of its previous
5 inspections, and has the discretion to decide whether to conduct an
6 inspection if:

7 (a) The same or a similar complaint or complaints have been filed
8 against the same dairy farm within the immediately preceding six-month
9 period; and

10 (b) The department made a determination that the activity that was
11 the subject of the prior complaint was not a violation.

12 (4) If the decision of the department is not to conduct an
13 inspection, it shall document the decision and the reasons for the
14 decision within twenty days. The department shall provide the decision
15 to the complainant if the name and address were provided to the
16 department, and to the dairy producer subject to the complaint, and the
17 department shall place the decision in the department's administrative
18 records.

19 (5) The report of findings of any inspection conducted as the
20 result of either an oral or a written complaint shall be placed in the
21 department's administrative records. Only findings of violations shall
22 be entered into the data base identified in RCW 90.64.130.

23 (6) A dairy farm that is determined to be a significant contributor
24 of pollution based on actual water quality tests, photographs, or other
25 pertinent information is subject to the provisions of this chapter and
26 to the enforcement provisions of chapters 43.05 and 90.48 RCW,
27 including civil penalties levied under RCW 90.48.144.

28 (7) If the department determines that an unresolved water quality
29 problem from a dairy farm requires immediate corrective action, the
30 department shall notify the producer and the district in which the
31 problem is located. When corrective actions are required to address
32 such unresolved water quality problems, the department shall provide
33 copies of all final dairy farm inspection reports and documentation of
34 all formal regulatory and enforcement actions taken by the department
35 against that particular dairy farm to the local conservation district
36 and to the appropriate dairy farm within twenty days.

37 (8) For a violation of water quality laws that is a first offense

1 for a dairy producer, the penalty may be waived to allow the producer
2 to come into compliance with water quality laws. The department shall
3 record all legitimate violations and subsequent enforcement actions.

4 (9) A discharge, including a storm water discharge, to surface
5 waters of the state shall not be considered a violation of this
6 chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall
7 therefore not be enforceable by the department of ecology or a third
8 party, if at the time of the discharge, a violation is not occurring
9 under RCW 90.64.010(18). In addition, a dairy producer shall not be
10 held liable for violations of this chapter, chapter 90.48 RCW, chapter
11 173-201A WAC, or the federal clean water act due to the discharge of
12 dairy nutrients to waters of the state resulting from spreading these
13 materials on lands other than where the nutrients were generated, when
14 the nutrients are spread by persons other than the dairy producer or
15 the dairy producer's agent.

16 (10) As provided under RCW 7.48.305, agricultural activities
17 associated with the management of dairy nutrients are presumed to be
18 reasonable and shall not be found to constitute a nuisance unless the
19 activity has a substantial adverse effect on public health and safety.

20 (11) This section specifically acknowledges that if a holder of a
21 general or individual national pollutant discharge elimination system
22 permit complies with the permit and the dairy nutrient management plan
23 conditions for appropriate land application practices, the permit
24 provides compliance with the federal clean water act and acts as a
25 shield against citizen or agency enforcement for any additions of
26 pollutants to waters of the state or of the United States as authorized
27 by the permit.

28 (12) A dairy producer who fails to have an approved dairy nutrient
29 management plan by July 1, 2002, or a certified dairy nutrient
30 management plan by December 31, 2003, and for which no appeals have
31 been filed with the pollution control hearings board, is in violation
32 of this chapter. Each month beyond these deadlines that a dairy
33 producer is out of compliance with the requirement for either plan
34 approval or plan certification shall be considered separate violations
35 of chapter 90.64 RCW that may be subject to penalties. Such penalties
36 may not exceed one hundred dollars per month for each violation up to
37 a combined total of five thousand dollars. Penalties for failure to
38 meet deadlines for plan approval or plan certification shall be imposed

1 at the department's discretion if the failure to comply is due to lack
2 of financial resources. Failure to register as required in RCW
3 90.64.017 shall subject a dairy producer to a maximum penalty of one
4 hundred dollars. Penalties shall be levied by the department.

5 **Sec. 4.** RCW 90.64.150 and 1998 c 262 s 15 are each amended to read
6 as follows:

7 The ~~((dairy waste))~~ livestock nutrient management account is
8 created in the custody of the state treasurer. All receipts from
9 monetary penalties levied pursuant to violations of this chapter must
10 be deposited into the account. Expenditures from the account may be
11 used only ~~((for the commission))~~ to provide grants ~~((to local~~
12 ~~conservation districts for the sole purpose of assisting dairy~~
13 ~~producers to develop and fully implement dairy nutrient management~~
14 ~~plans))~~ for research or education proposals that assist livestock
15 operations to achieve compliance with state and federal water quality
16 laws. The director of agriculture shall accept and prioritize research
17 proposals and education proposals. Only the ~~((chairman of the~~
18 ~~commission))~~ director or the ~~((chairman's))~~ director's designee may
19 authorize expenditures from the account. The account is subject to
20 allotment procedures under chapter 43.88 RCW, but an appropriation is
21 not required for expenditures.

22 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.64 RCW
23 to read as follows:

24 (1) All powers, duties, and functions of the department of ecology
25 pertaining to chapter 90.64 RCW are transferred to the department of
26 agriculture. All references to the director of ecology or the
27 department of ecology in the Revised Code of Washington shall be
28 construed to mean the director of agriculture or the department of
29 agriculture when referring to the functions transferred in this
30 section.

31 (2)(a) All reports, documents, surveys, books, records, files,
32 papers, or written material in the possession of the department of
33 ecology pertaining to the powers, functions, and duties transferred
34 shall be delivered to the custody of the department of agriculture.
35 All cabinets, furniture, office equipment, motor vehicles, and other
36 tangible property employed by the department of ecology in carrying out

1 the powers, functions, and duties transferred shall be made available
2 to the department of agriculture. All funds, credits, or other assets
3 held in connection with the powers, functions, and duties transferred
4 shall be assigned to the department of agriculture.

5 (b) Any appropriations made to the department of ecology for
6 carrying out the powers, functions, and duties transferred shall, on
7 the effective date of this section, be transferred and credited to the
8 department of agriculture.

9 (c) Whenever any question arises as to the transfer of any
10 personnel, funds, books, documents, records, papers, files, equipment,
11 or other tangible property used or held in the exercise of the powers
12 and the performance of the duties and functions transferred, the
13 director of financial management shall make a determination as to the
14 proper allocation and certify the same to the state agencies concerned.

15 (3) All rules and all pending business before the department of
16 ecology pertaining to the powers, functions, and duties transferred
17 shall be continued and acted upon by the department of agriculture.
18 All existing contracts and obligations shall remain in full force and
19 shall be performed by the department of agriculture.

20 (4) The transfer of the powers, duties, functions, and personnel of
21 the department of ecology shall not affect the validity of any act
22 performed before the effective date of this section.

23 (5) If apportionments of budgeted funds are required because of the
24 transfers directed by this section, the director of financial
25 management shall certify the apportionments to the agencies affected,
26 the state auditor, and the state treasurer. Each of these shall make
27 the appropriate transfer and adjustments in funds and appropriation
28 accounts and equipment records in accordance with the certification.

29 NEW SECTION. **Sec. 6.** Sections 2 and 5 of this act are necessary
30 for the immediate preservation of the public peace, health, or safety,
31 or support of the state government and its existing public
32 institutions, and take effect July 1, 2003.

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